

US EPA ARCHIVE DOCUMENT



Region 4 Prospective Purchaser Inquiry Response Teams

Purpose

The objective of Region 4's Prospective Purchaser Inquiry (PPI) Response Team Approach is to effectively facilitate the revitalization of contaminated property. Although geared primarily for the revitalization of Superfund sites, the PPI procedures generally are applicable to all contaminated and formerly contaminated property. This service offers fast, accurate, and comprehensive information to enable the prospective purchaser to make a timely business decision about whether to purchase the site or not. Through this approach, the Region can ensure that prospective purchasers have accurate information about a site's environmental status and other pertinent information. Also, the Region can contribute to reuse outcomes that are consistent with the selected remedy and with long-term protection of human health and the environment at the site. Region 4 has assembled site-specific teams that respond to each prospective purchaser inquiry and address four issues (see p. 2) critical to the successful redevelopment of any site. In addition, the service creates informed purchasers who will not interfere with or impede EPA's response actions, whose activities will be consistent with the remedy, and who may enhance the cleanup.

Benefits and Success Stories in Region 4

As of October 2005, Region 4 has conducted more than 50 PPI Response Team meetings and calls for site-specific prospective purchaser inquiries in the past 10 months. The response from the public has been tremendous.

Prospective purchasers have congratulated Region 4 for being responsive, informative, and efficient. Some inquiries have led to purchases, but even prospective purchasers whose inquiries have not progressed past the initial meeting have offered praise. One prospective purchaser who wanted to build a plant nursery decided after 15 minutes of discussion that a particular site was not suitable for his needs because the use of ground water for irrigation was restricted; even so, he praised the process for saving him substantial time and money. In another instance, a congressional aide accompanied a prospective purchaser to a response team meeting. The aide had warned the prospective purchaser that EPA is rarely forthcoming with information and that the meeting would likely be unproductive. After the meeting, the aide openly reversed his position and said that he had never seen EPA so responsive and helpful. The PPI Response Team approach ensures that Region 4 is able to provide consistent and reliable information to prospective purchasers in a timely fashion.

Internally, Region 4 staff also are pleased with the PPI Response Team approach. Together, the members of each response team have the knowledge base to address both general and site-specific issues that are relevant to revitalization inquiries. For example, staff attorneys are grateful for the time-saving aspect – if the Region uses the response team approach, attorneys can avoid writing comfort letters until the prospective purchaser's interest is fully confirmed. Remedy Project Managers and On-Scene Coordinators recognize that a well-informed purchaser will not impede EPA's cleanup or interfere with the integrity of an institutional control; this makes the Remedy Project Managers' and On-Scene Coordinators' jobs easier. The Region 4 response teams provide prospective purchasers with guidance on liability protection provisions and liens, and provide fact

sheets. Providing these materials up front helps to reduce time-consuming demands on EPA staff throughout the process.

Since adopting the approach six months ago, Region 4 conducts approximately two PPI Response Team conference calls or meetings per week. The conference calls or meetings frame the relevant issues for the prospective purchaser, including the availability of the property before full cleanup is achieved. Armed with this information, developers can make well-informed decisions concerning their redevelopment plans. Sometimes, a developer is willing to conduct part of the site cleanup in exchange for EPA's assistance in meeting the developer's construction schedule or in exchange for a windfall lien resolution. This scenario is currently playing out at the Moss Soap & Chemical removal site in Florida, where the developer made an inquiry about the property, engaged in the response team process, and now intends to conduct the site's cleanup so that revitalization can begin as quickly as possible. (At this site, EPA released any lien on the property in return for the cleanup work.)

Region 4 Process

A prospective purchaser of a Superfund site is not required to contact EPA before purchasing the property; however, some prospective purchasers will contact EPA to initiate a revitalization inquiry. When this occurs, a site-specific response team assembles to assist the prospective purchaser. The response team is composed of the staff assigned to the site, including the technical person (e.g., Remedy Project Managers, On-Scene Coordinators, etc.), attorney, cost recovery specialist, the Regional Lead Attorney for Reuse and Redevelopment, and the Superfund Redevelopment Initiative Regional Coordinator. Thus, the response team is well-equipped to answer almost any question about the site and address issues relating to the revitalization. In response to the inquiry, the team schedules a teleconference or meeting within three days of the initial inquiry in order to address the four following issues:

1. What is the current status of EPA's cleanup and what are the future anticipated actions?
2. Is the proposed redevelopment compatible with EPA's cleanup and with the existing and potential institutional controls?
3. Does the prospective purchaser understand the applicable federal landowner liability protections?
4. How will EPA settle or resolve any Section 107(l) Superfund liens or Section 107(r) Windfall liens?

Follow-up meetings may be necessary to adequately address the four issues. The prospective purchaser is encouraged to also contact the state to discuss any state cleanup and liability issues. If the prospective purchaser decides to purchase the property, EPA can offer additional revitalization tools such as status/comfort letters and Ready for Reuse Determinations, and can offer to settle EPA's lien authorities.

The Compatibility Question

EPA's primary responsibility is to protect human health and the environment, and any proposed redevelopment needs to be compatible with EPA's cleanup. Therefore, the compatibility question is a threshold issue. Although it can be quite complex in some cases, compatibility is addressed to the best of EPA's ability before the purchase if possible. EPA engages the prospective purchaser in a discussion about the future redevelopment plans for the site and considers future land use plans in making remedy selection decisions.

Prior to the first meeting, the prospective purchaser provides EPA, if possible, with development plans, engineering maps, and other project information to ensure a productive first meeting. Resolving the compatibility issue early in the process and informing the prospective purchaser of the risks associated with purchasing contaminated property minimizes surprises down the road. Many times, all parties realize after the first meeting that the redevelopment plan, or the timing for implementing the redevelopment plan, needs to be modified in order to be compatible with EPA's cleanup. The prospective purchaser factors this information into his or her business decision.

EPA may be in a position to be flexible with some aspects of the cleanup in order to accommodate the specific redevelopment plans. For example, if a prospective purchaser needs a specific area for a parking lot, EPA can evaluate whether its plan to install monitoring wells in that proposed parking area could be modified to accommodate the redevelopment plans.

Precautions

The response team is careful not to give assurances or guarantees – the response team makes the prospective purchaser aware that he or she is taking on some risk at a given site concerning assumptions of compatibility between the proposed redevelopment and the cleanup. The discussions EPA has with the prospective purchasers and the assumptions made are based on known current conditions. EPA cannot warrant compatibility of its cleanup with any specific use of the site.¹ For example, it is possible that future development and/or operations may be disrupted if unknown contamination is discovered that necessitates a change in the cleanup. EPA makes it clear that landowner liability protection under the bona fide prospective purchaser provision of CERCLA rests upon the prospective purchaser's full cooperation with the cleanup, and that the bona fide prospective purchaser provision does not protect against exacerbation of conditions or a future release by the bona fide prospective purchaser. The prospective purchaser also understands that EPA attorneys are not offering legal advice and that the purchaser will have to obtain his or her own counsel for legal advice.

Adapting the Approach to Other Regions

How might other Regions adopt and implement the redevelopment team approach? Region 4 cites three factors that contribute to successful implementation:

- **Regional structure:** A Regional Lead Attorney for Reuse and Redevelopment is essential. A designated revitalization attorney brings to the table an expertise in the legal matters of site reuse. In Region 4, the revitalization attorney participates in all response team meetings, thus providing consistency in the Region's response to prospective purchaser inquiries.
- **Internal marketing:** The more visibility the process has, the more likely Regional staff are to embrace it. Superfund Redevelopment Initiative Coordinators and the Regional Lead Attorney for Reuse and Redevelopment should circulate all response team materials, including support documents, to Regional staff.
- **Site visibility:** Region 4 has produced a number of site reuse fact sheets that describe the details of Region 4 sites' readiness for use. These fact sheets, which are posted online, have prompted many redevelopment inquiries from prospective purchasers.

¹ EPA facilitates revitalization through reuse plans, the revitalization process, etc., but does not determine the specific reuse of the contaminated property or favor one redeveloper over another. Land use determinations are primarily a local government issue.

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